IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1083 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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MAHESHBHAI RATNABHAI TADVI
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
None for the Appellant
MR HL JANI, ADDITIONAL PUBLIC PROSECUTOR for the Opponent

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 20/12/2006

ORAL JUDGMENT

1. Present Appeal was filed by learned advocate Mr.B.M.Mangukiya on 13.06.2006. An urgent note was filed on 07.09.2006 requesting to place the matter on board on

11.09.2006. The matter was listed on 14.09.2006.

On 14.09.2006, learned advocate Mr.Mangukiya had filed sick note and therefore, the matter was adjourned to 26.09.2006. On 26.09.2006, learned advocate Mr.Mangukiya made a statement that the matter is transferred to learned advocate Mr.Kharadi and therefore, the matter was adjourned to 09.10.2006.

On 09.10.2006, it was mentioned on behalf of learned advocate Mr.Kharadi that he has no instructions in the matter. On that day, learned Additional Public Prosecutor Mr.A.J.Desai had stated that the appellant is in jail and therefore, the matter was adjourned to 07.11.2006. In the meantime, the Office was directed to call for the Record and Proceedings so as to reach to this Court on or before 06.11.2006.

On 07.11.2006, it was stated that learned advocate Mr.Mangukiya and Ms.Bela A.Prajapati have filed sick note and therefore, the matter was adjourned 29.11.2006.

On 29.11.2006, learned advocate M/s.Mangukiya and Bela A.Prajapati did not remain present and therefore, the Office was directed to issue notice to the appellant to make necessary arrangement to present his case on the next date, i.e. 20.12.2006.

2. Today the matter was called out in the morning. Nobody was present. The matter was kept back. In the second call, learned advocate Mr.Vishal D.Shukla stated that the client has taken away the papers from learned advocate Mr.Mangukiya and Ms.Bela A.Prajapati and therefore, they do not appear in the matter. Learned advocate Mr.Shukla does not know as to when the papers are taken away by the client – appellant.

3. Record and Proceedings is received. The same is perused. Mr.H.L.Jani, learned Additional Public Prosecutor is heard in the matter.

4. Present is an Appeal filed against the judgment and order dated 30.05.2006 passed by the learned Sessions Judge, Dahod in Sessions Case No.261 of 2004.

The learned Sessions Judge is pleased to convict the accused – appellant for an offence under Section 304(2) of the Indian Penal Code and awarded 5 years R.I., fine of Rs.2,000/- and in default, 1 month's S.I.

The accused – appellant is also convicted for an offence under Section 324 of the Indian Penal Code and is awarded 1 years S.I., fine of Rs.500/- and in default, 15 days S.I.

The accused – appellant is acquitted for the offence under Section 504 of the Indian Penal Code.

The learned Sessions Judge is pleased to order that if the amount of fine of Rs.2,000/- is paid by the accused, on expiry of the Appeal period, the same should be paid to the widow of the deceased – Parvatbhai Babubhai Sangada.

The learned Sessions Judge has also ordered that in the event the amount of Rs.500/- is paid by the accused, then on expiry of the Appeal period, the same should be paid to the victim – Sartanbhai Babubhal Sangada.

5. Perused the record, evidence of P.W.No.6 – Narvatbhai Babubhai Sangada at Exh.20, evidence of P.W.No.8 – Dr.Chandrahas Keshavrao Shiknevish at Exh.28, who had performed the postmortem, Postmortem Note at Exh.30, evidence of P.W.No.9 – Sartanbhai Babubhai at Ex.31, who is an injured witness, evidence of P.W.No.11 – Dr.Sashikant Vasantlal Nagori at Exh.34, who had examined Sartanbhai Babubhai Sangada – one of the injured, evidence of P.W.No.15 – Dr.Parmanand Madanlal Gupta at Exh.45, who had examined the deceased – Parvatbhai Babubhai Sangada and Sartanbhai Babubhal Sangada – injured had referred to the Civil Hospital, Godhara. Besides, the judgment and order of the learned Sessions

Judge is also perused. The learned Sessions Judge has appreciated the evidence led before him and after appreciating the evidence, has come to the conclusion that the accused is guilty for an offence under Section 304(2) of the Indian Penal Code.

6. No case is made out. Hence, this Appeal is dismissed.

(RAVI R.TRIPATHI, J.)

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